

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

WARREN N. McCOWAN, et al.,

Plaintiffs,

vs.

Civ. No. 98-581 WWD/LFG

ALL STAR MAINTENANCE, INC., et al.,

Defendants.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on Plaintiffs' Objection to Magistrate Judge Garcia's Order Granting Defendant All Star Maintenance, Inc.'s Motion Under Rule 36(b) to Amend Admission ("Objection") [**Doc. 119**], filed May 1, 2002. Plaintiffs request that Judge Garcia's Memorandum Opinion and Order [**Doc. 114**], filed April 26, 2002 be stricken because Judge Garcia "did not have jurisdiction to hear and review the motion; [and] the parties never consented to him conducting any of the proceedings in this matter." Pls.' Objection at 1-2. For the following reasons, I find that Plaintiffs' objection is not well taken.

On September 21, 1999, Magistrate Judge Garcia was assigned to this case for discovery purposes. See Minute Order [**Doc. 51**]. On April 26, 2002, Judge Garcia entered an order granting Defendant All Star's motion to amend a response to a request for admission. See Doc. 114. "[M]agistrates may hear and determine any pretrial matters . . . save for eight excepted motions." Ocelot Oil Corp. v. Sparrow Indus., 847 F.2d 1458, 1461 (10th Cir. 1988) (footnote omitted). "Magistrates may issue orders as to non-dispositive pretrial matters." Id. at 1461-62.

Defendant All Star's motion to amend concerned a non-dispositive pretrial discovery

issue and is not listed as one of the eight exceptions described in 28 U.S.C. § 636.¹ Nor is there a provision in 28 U.S.C. § 636 that requires the consent of the parties before a magistrate judge may enter orders with respect to non-dispositive pretrial matters to which he is assigned. Consequently, I find that Judge Garcia acted within his authority pursuant to 28 U.S.C. § 636 when he entered an order with respect to Defendant's motion to amend an admission.

WHEREFORE,

IT IS ORDERED that Plaintiffs' Objection to Magistrate Judge Garcia's Order Granting Defendant All Star Maintenance, Inc.'s Motion Under Rule 36(b) to Amend Admission **[Doc. 119]** is **DENIED**.


UNITED STATES MAGISTRATE JUDGE

¹ The excepted motions are those: 1) for injunctive relief; 2) for judgment on the pleadings; 3) for summary judgment; 4) to dismiss or quash an indictment or information made by the defendant; 5) to suppress evidence in a criminal case; 6) to dismiss or to permit maintenance of a class action; 7) to dismiss for failure to state a claim upon which relief can be granted; and 8) to involuntarily dismiss an action. 28 U.S.C. § 636(b)(1)(A).